

Protection of non-agricultural geographical indications under EU law: implications for the *EVFTA* and compatibility with Vietnam's intellectual property legislation

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Abstract: The European Union (EU) has enacted legislation to protect the geographical indications for artisanal and industrial products, starting in 2025. These restrictions are fundamentally unprecedented because the EU has historically protected geographical characteristics solely for agricultural products. Upon implementation, these limits will impact the trade agreements that the EU has made with other countries, particularly Vietnam, through the *EU–Vietnam Free Trade Agreement (EVFTA)*. Although a few research works have compared the geographical indications protection legislation of Vietnam and the EU regarding the *EVFTA*, there has not yet been any article that addresses the new EU restrictions on non-agricultural geographical indications and its impact on the *EVFTA* and Vietnamese law. This research aims to analyze the current facets of EU regulations regarding geographical indication protection for non-agricultural products and their ramifications for the *EVFTA*. This essay analyzes the adaptability of the Vietnamese legal system regarding geographical indications protection in light of the EU's growing impact on geographical indications protection for non-agricultural items, examines the similarities and contrasts between the two systems, identifies the factors influencing the sluggish development of non-agricultural GIs and puts forth several suggestions to enhance the legal framework in Vietnam.

Keywords: EU IP Law, *geographical indications*, *non-agricultural geographical indications*, EU–Vietnam Free Trade Agreement (EVFTA), Intellectual Property Law (Vietnam)

1. Introduction

Preventing consumer fraud, strengthening industrial standards, raising rural value and encouraging sustainable development require geographical indication (GI) protection, ‘Regulation (EU) 2023/2411’ of the European Parliament and Council, dated 18 October 2023, regarding the protection of GIs for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 was published on 27 October 2023 and will take effect on 1 December 2025. The Regulation protects geographical markers for artisanal and industrial products with unique quality, reputation or other qualities. The EU previously only regulated agricultural GIs, including wine, spirits, food and agricultural goods. The safeguarding of non-agricultural GIs is expected to augment trade associated with these indications by 50 billion euros among EU trading partners (EPRS, 2019). Article 12(23) of the *EU–Vietnam Free Trade Agreement (EVFTA)* limits the protection of GIs in the bilateral trade agreement between Vietnam and the EU to wines, spirits, agricultural products, and foodstuffs originating from the territories of the parties, excluding craft and industrial goods. Conversely, Article 12(63) of the *EVFTA* stipulates that the Working Group on Intellectual Property Rights, including GIs, may deliberate on any issues pertaining to the implementation and functioning of the intellectual property issues in Chapter 12. Its responsibilities will encompass: (a) formulating a recommendation for the Parties to modify Annex 12-A (‘List of GIs’) in alignment with Article 12(26) (‘Amendment of the List of GIs’) and (b) facilitating the exchange of information concerning legislative and policy advancements related to GIs and other relevant matters in this domain. Consequently, modifications to the *EVFTA*’s norms and classifications concerning GI will be enacted shortly to align with the EU legal standards.

In Vietnam, a GI denotes a classification that indicates the GI of a product from a particular region, locality, territory or country (*Intellectual Property Law 2005*, amended in 2009, 2019 and 2022). The *Intellectual Property Law* provides protection for both agricultural and non-agricultural products, indicating that there is no differentiation in the protection of agricultural and

non-agricultural GIs. Nevertheless, the legislation concerning GIs has mostly proven ineffective in practice, and the procedure for registering geographical indicator protection in Vietnam is complex, creating challenges for the parties involved in the registration (Tuong, 2022). Given the deficiencies in GI protection in Vietnam and its membership in international intellectual property treaties, particularly the *EVFTA*, it is imperative that Vietnamese intellectual property laws undergo the necessary modifications to strengthen and advance GI protection inside the nation. The paper seeks to identify the deficiencies in and provide remedies for the harmonious development of the GI system in Vietnam. The authors of this article intend to examine: (1) the potential ramifications of this alteration for the GI-related provisions of the *EVFTA*; (2) recent developments in EU legislation concerning the protection of non-agricultural GIs from a comparative perspective to the legal framework of Vietnam; and (3) propose recommendations for the modification of GI regulations in Vietnam. The authors predominantly employ analytical and comparative legal methodologies to shed light on pertinent legal regulations and acknowledge that EU regulations are established through the process of legal harmonization and function as framework laws, drawing comparisons with national laws. Consequently, the juxtaposition of the EU legal framework with Vietnam's national legislation will exhibit particular nuances and constraints. Furthermore, the method of statistical comparison is employed in certain instances to elucidate the number of cases pertaining to GI registration. The article further constrains itself by not engaging in an analysis of the registration procedures and enforcement processes for GI, given that these are predominantly territorial and unique to each nation, as acknowledged in international property treaties, including the *TRIPs Agreement* (1994, Article 3(2)).

2. The *EVFTA*'s role in the preservation of GIs for non-agricultural products

The EU regulations for non-agricultural GIs not only seek to harmonize Member States' laws, but are also regarded as a benchmark in trade discussions with partner countries. In the case of Vietnam, the *EVFTA* encompasses intellectual property laws in Chapter 12, which consists of 63 Articles and 2 Appendices ('List of GIs' and 'List of Product Groups'). The main content includes obligations pertaining to the principles of intellectual property protection, the scope of intellectual property rights, inventions,

industrial designs, trademarks, GIs, trade secrets, plant varieties, and issues regarding the exhaustion and enforcement of intellectual property rights. Article 12(23), paragraph 1 of the *EVFTA* specifies that the scope of protection for GIs is limited to wines, spirits, agricultural products and foodstuffs, as outlined in Annex 12-A, encompassing 169 GIs from the EU and 39 GIs from Vietnam and, naturally, excludes any non-agricultural GIs. This Regulation specifies that non-agricultural products, such as handicrafts including ceramics, textiles and unique local industrial goods from Vietnam, are not eligible for protection under GIs and are therefore omitted from the GIs protection list of the *EVFTA*. These statutes have been recorded in the legal documents of the EU and in free trade agreements with other partner countries. The EU has established a definitive regulatory framework that efficiently safeguards items that originate from the region. However, current legislation concerning GIs in Vietnam does not implement the limitations specified in Article 12(23) of the *EVFTA*. GIs under current Vietnamese legislation include the four categories outlined in paragraph 1, as well as other products that meet the legal requirements (Dao, 2018, pp. 12–13). The themes available for protection under GIs are more defined and broader than those outlined in the *EVFTA*.

Products previously safeguarded by intellectual property law enhance value recognition during commercialization (Tkeshelashvili, Dutt and Gurgendize, 2024), gaining benefits for manufacturers and augmenting national tax revenue. The mutual recognition of GIs is thought to help firms improve their branding and reduce the dangers and complications of EU GI registration. However, the regulation limiting GIs to four product categories may hinder other eligible companies. Textile products and other similar products not specified in Article 12(23) will not be afforded protection under GIs, notwithstanding the recent export development in this sector and prevailing positive projections for shipments to the European market (WTO Center–VCCI, 2023) or choosing to be protected under the national law of EU Member States (Pham and Chu, 2015, p. 33). If Article 12(23) of the *EVFTA* is a closed provision, the fundamental principle of free trade under this Agreement will remain unachieved, especially due to the significant discrepancies in political (Nguyen and Le, 2023) and economic (Dao, 2018, p. 11) conditions between the two sides. Article 12(63) of the *EVFTA*, as part of the new generation of free trade agreements (FTAs), provides a flexible framework for the revision and enhancement of existing commitments by allowing intellectual property working groups to manage and negotiate amendments to GIs. These entities may suggest modifications to the roster

of safeguarded GIs and engage in discussions on related policies and laws to expand their range of applicability.

Vietnam may be affected by the EU's latest non-agricultural GI legislation and the *EVFTA* (Article 12(62)) GI list revisions. This new law recognizes the cultural and economic importance of handicrafts and industrial items (Venner Shipley, 2023). Legalizing GI protection for non-agricultural products may alter the EU's partner trade agreements. Because the EU has improved GI protection, the *EVFTA* may be updated. Although Article 12(23) prohibits non-agricultural products from protection, Article 12(63) allows for their debate and inclusion in the list of protected GIs. Vietnam exhibits significant potential, as the number of handicraft and industrial products shipped to the European market offer tremendous economic worth and have been favorably received (Vu, 2024). Thus, the EU's enactment of the new legislation concerning the protection of non-agricultural GIs signifies the initiation of negotiations to expand the scope of GI protection within the *EVFTA* framework. Article 12(63) has provided latitude for agreements and adjustments to the scope of protection, thereby allowing the inclusion of handicraft and industrial products in the list of protected items, even if Article 12(23) currently excludes these products. Nevertheless, as previously mentioned, the EU has now recognized more flexible legislation, including the protection of GIs for artisanal and industrial items, as well as lenient regulations for GI preservation in Vietnam. The provision allowing modifications to the list under Article 12(63) of the *EVFTA* will advance negotiations for the expansion of subjects covered by GIs in Article 12(23) of the *EVFTA* and the incorporation of Annex 12-A related to protected GIs. Clearly, non-agricultural GI agreements will soon be revised to align with the *EVFTA*. Consequently, to accommodate this development, it is necessary to analyze and reevaluate the criteria of Vietnamese legislation regarding GI.

3. The conformity of Vietnamese legislation with EU requirements for the protection of geographical indications for non-agricultural items

3.1 The concept of geographical indication

By January 2025, only two of the 137 geographical indicators (GIs) were classified as non-agricultural. Among the notable GIs, the Hue conical hats (*nón lá Hue*) and Cao Bằng bamboo mats stand out as exemplary representations. It is evident that non-agricultural GI has not yet garnered the required level of attention (Vu, 2015, pp. 159–161) in a nation renowned for its rich tradition of diverse craft villages such as Vietnam. What factors contribute to this situation? Is the decline of traditional craft villages attributable to the legal framework or are they slowly diminishing in response to market forces? ‘Regulation (EU) 2023/2411’ (2023, Article 1) on product protection has been implemented by the EU to foster commercial activities that safeguard local traditional designating crafts and industrial products “with a given quality, reputation, or other characteristic linked to their geographical origin” as a GI. The new regulatory framework will enable local communities and small to medium-sized enterprises to engage in the market, while concurrently safeguarding unique local capabilities. The term “craft and industrial products” denotes items produced either entirely by hand, utilizing manual or digital tools or through mechanical means where manual input is a crucial element of the final product or produced in a standardized fashion, encompassing serial production and the use of machinery (‘Regulation (EU) 2023/2411’, 2023, Article 4(1)). Furthermore, EU regulations define GIs as “designations for craft and industrial products possessing specific quality, reputation, or other attributes associated with their geographical origin” (‘Regulation (EU) 2023/2411’, 2023).

In Vietnam, GIs are defined as “indicators that signify the geographical origin of products from specific regions, locales, territories, or nations” (*Intellectual Property Law*, Article 4(22)). The GI system in Vietnam does not distinguish between agricultural and non-agricultural categories and is applicable to both. The legislative attributes of GI are distinctly and effectively governed within Vietnamese ideology. Thus, the definitions of GIs by Vietnam and the EU correspond to the criteria set forth in Article 22(1) of the *General Agreement on Tariffs and Trade (GATT)*; 1994), which offers a minimum standard (Upreti, 2022, pp. 26–28) and a comprehensive definition of GIs without limiting it to any particular category. However, there are certain limitations to these regulations in Vietnam, which will be analyzed below.

Each model possesses distinct advantages and disadvantages, exemplified by the classification of agricultural and non-agricultural GI in the EU, enabling the government to categorize farmers in rural regions, artisans and workers in craft villages and urban areas, thereby facilitating the formulation of relevant policies. Nonetheless, this engenders disparities in the regulatory framework and challenges in administration. The absence of distinction in Vietnamese law fosters uniformity, yet it also homogenizes the topics, hindering the advancement of craft villages in safeguarding non-agricultural GIs.

3.2 Required characteristics of GI designated products

Within the EU, pursuant to 'Regulation (EU) 2023/241' (2023, Article 6(1)), a craft or industrial product must possess the following characteristics to qualify for geographical indication protection: (a) the product has a recognized origin in a specific location; (b) the product's quality, reputation or other attributes are predominantly associated with its origin and (c) at least one production step occurs within the defined geographical area. This rule parallels the Vietnamese *Intellectual Property Law* in the first two prerequisites.

In Vietnam, the prerequisite for GI protection is that the product must originate in the location associated with the GI. The product's reputation, quality and distinct attributes are explicitly illustrated by the delineation of certain characteristics—an essential document in the application for GI. Article 30(4) of 'Circular No. 23/2023/TT-BKHCN', issued by the Ministry of Science and Technology on November 30, 2023, which guides the implementation of 'Decree No. 65/2023/ND-CP', stipulates that the specific characteristics of the product must encompass the following essential information: (1) a listing of the specific characteristics or quality of the product as determined by GIs; (2) the product's reputation as influenced by geographical conditions; (3) GIs that contribute to the characteristics or quality and reputation of the product associated with the GI; (4) the interrelation among the aforementioned factors and (5) details regarding the mechanism for self-assessment of the specific characteristics or quality of the product. GIs significantly influence the reputation, quality and characteristics of products, encompassing both natural and human impact. The natural factors comprise a collection of characteristics including climate, soil, topography, rivers and more natural components. The human factor encompasses the skills, techniques and traditional production methods of

individuals in the region where the GI products are produced. Nevertheless, the existing legislation is devoid of explicit instructions, which gives rise to multiple interpretations.

From a practical standpoint, products bearing a GI must be processed, manufactured and packaged at a designated GI location. The case of Phu Quoc fish sauce (protected under the *EVFTA*) demonstrates the strict geographical requirements of GI. Phu Quoc fish sauce is a classified product made in the Phu Quoc District, Kien Giang Province, and is a result of a process involving fishing, fermentation, pressing, blending and bottling. Any production in another area invalidates the geographical indication of the product. For example, fish sauce produced in Phu Quoc but bottled abroad cannot meet the Phu Quoc GI product designation criteria and its production had to be discontinued in 2008. Long-distance transportation influences the physicochemical properties of the fish sauce, affecting its quality and attributes when consumed. The current Vietnamese regulations do not require geographically protected products to be manufactured in the same region. This diverges from EU rules, which permit a product to meet the criteria if at least one production step takes place in the GI protection zone. The authors argue that this restriction is justified, especially in the context of handicraft items, which can be made in various locations; however, only some stages are crucial. Cotton, for example, can be farmed in a designated area, but its reputation is only created when artisans from traditional craft villages embellish the cloth with patterns.

3.3 Proprietorship and application of geographical indication

Under EU legislation, manufacturers, whether individuals or collectives, can register GIs with local government support ('Regulation (EU) 2023/2411', 2023, Article 8). To use the protection mechanism in Vietnam, which requires a protection certificate, the geographical indication must be registered with appropriate government agencies. The state owns the geographical indication (*Intellectual Property Law*, Article 121(4)) and can register it according to IP legislation. With state consent, organizations, individuals or their representatives producing GI-marked goods and local administrative authorities under the GI's authority can register the GI. The state is not directly responsible for this process.

The state's direct role in registering GI protection makes it difficult to identify enforcement organizations. The state authorizes corporations, individuals or their agents as well as local administrative bodies under its

jurisdiction to register GIs. The Government of Vietnam issued 'Decree No. 65/2023/ND-CP' to outline and instruct the execution of specified provisions of the *Intellectual Property Law* involving industrial property, particularly registration subjects for foreign entities related to GIs protected in other countries. Foreign entities and organizations holding international GI rights are allowed to register the GI in Vietnam. Vietnam does not need the approval of foreigners to register them as government employees. Any organization or individual manufacturing goods with a GI designation is free to use it as long as they uphold the honor of their region of origin. A foreign entity can prove its legal entitlement to a foreign GI.

Organizations authorized to use GI represent all authorized users, not just those responsible for its upkeep. Article 37 of 'Decree No. 65/2023/ND-CP' lists the GI management entities and organizations. People's Committees of provinces and centrally run cities that border the GI region, along with designated institutions and organizations, must manage it under this decree. As a local state administrative entity, the People's Committee has considerable latitude in managing GIs. In addition to being actively involved in the GI region, the People's Committee engages with the local community as well as producers and sellers of GI products. It can be assumed that the People's Committee will represent the state in ownership of a GI facility. According to Article 123(2) of *Intellectual Property Law*, companies and individuals can be regulated over GI use. Multiple entities manage and exploit GI, making it difficult to commercialize (Vu, 2015, p. 168; Nguyen, 2021, pp. 60–61).

3.4 Safeguarding of geographical indications and infringing activities

Legislation governing GI breaches in the European Union and Vietnam is analogous. The following actions are deemed violations of the rights associated with protected GIs within the Vietnamese legal framework in comparison with the relevant EU legislation.

- An individual or organization utilizes the protected GI for a product that, while originating from the designated geographical location, fails to conform to the established features and quality criteria associated with GI (*Intellectual Property Law*, Article 129(3)(a)). Any product produced in a GI-protected area that fails to meet the requisite criteria and standards will not be granted this protection. Consequently, the intentional use of GI in these situations is deemed unlawful. To qualify

for protection, Cao Phong oranges (Hoa Binh province) must be produced and registered under the supervision of the body holding GI management rights. This occurs despite the substantial number of individuals and companies that manufacture this commodity. In the EU, the regulation concerning comparable products not protected by GI registration states:

any direct or indirect commercial use of the geographical indication in relation to products not covered by the registration, where those products are comparable to the registered products or where the use of the name exploits, weakens, dilutes, or is detrimental to the reputation of the protected GI ('Regulation (EU) 2023/2411', 2023, Article 40(a)).

The EU regulations are more comprehensive, inclusive and logical. Vietnamese regulations generally deny protection to products that do not meet quality standards; however, in accordance with the principles of GIs, it is crucial to exclude products of comparable quality produced in the same geographical region that fail to adhere to registration protocols and procedures.

- An individual or business uses the protected GI for items similar to those linked to the geographical indicator to capitalize on its reputation (*Intellectual Property Law*, Article 129(3)(b)). While the geographical characteristic is protected for similar products, products without the characteristic constitute an infringement, such as a product marketed as GI for Cao Phong orange juice, even though the GI protection only applies to Cao Phong oranges. EU regulations cover practical infringement actions but not precise measures of Vietnamese law. By stating that “any other practice liable to mislead the consumer as to the true origin of the product” ('Regulation (EU) 2023/2411', 2023, Article 40(d)), EU courts can interpret specific issues separately, unlike in Vietnam.
- An individual or organization uses any label that is identical or similar to a protected GI for a product not sourced from that area, leading consumers to mistakenly believe the product came from there (*Intellectual Property Law*, Article 129(3)(c)). EU regulations mirror Vietnamese law but restrict potentially misleading packaging and advertising practices, including on digital platforms ('Regulation (EU) 2023/2411', 2023, Article 40(c)). EU product marketing regulations strictly follow fairness principles (Kur, Lee and Tischner, 2024, p. 23). Vietnamese law only applies to “consumers”—the ultimate participants in business transactions. Thus, the EU regulations need a focus on business, not just

“consumers”. E-commerce and online platforms must be prioritized to match the current market features, especially following the COVID-19 epidemic.

- The use of protected GIs for wines, spirits derived from wines and spirits that do not originate from the corresponding geographical area of that indication is prohibited, even when the actual origin of the products is specified or the geographical indication is presented through translation, transliteration or supplemented by terms, types, forms, imitations or analogous expressions (*Intellectual Property Law*, Article 129(3)(d)). Conversely, EU law extends beyond the agricultural product, as examined in Vietnamese law, and explicitly governs instances of using GIs with product descriptors such as “style”, “type”, “method”, “as produced in”, “imitation”, “flavor”, “scent”, “like”, or analogous terms (‘Regulation (EU) 2023/2411’, 2023, Article 40(b)). This rule aims to align with the provisions of the *EVFTA*, should Vietnam become a member regarding the category of agricultural products eligible for global indication protection.

One undeniable fact is that effective management of intellectual property helps enhance the market value of products (Menell *et al.*, 2021, p. 28). These outcomes have been achieved due to the rigorous compliance of the GI management and control system with EU legislation. The GI management strategies are classified into three levels: (1) self-management; (2) internal management and (3) external management. The self-management system is implemented by individuals and organizations that produce and sell GI products. The self-management technique also improves the quality of GI products. Self-management entities are principal actors in production and economic activities.

4. Suggestions for the legal framework of GI protection in Vietnam

4.1 Proprietorship and entitlement to GI registration

Unlike the EU, which grants GI ownership rights to producer groups or individuals directly involved in the creation of protected goods, Vietnamese legislation assigns ownership rights exclusively to the state (*Intellectual Property Law*, Article 121(4)). This model reflects socialist state ownership, which includes specific legislation that designates GIs as state property in

all cases, obligating the required authorities to protect this ownership. The right to register a GI is vested solely in the state (*Intellectual Property Law*, Article 88(1)). The state has the authority to authorize organizations and individuals producing goods with a GI, collective organizations representing those entities or local administrative agencies in the region of the GI to exercise the right to register the GI and cannot allow private ownership, as in the EU.

GI ownership rights cannot be harmonized between the EU and Vietnamese law. Consequently, the existing legal framework is unsuitable for the purpose of increasing the use of geographic information to improve the competitiveness of households, traditional craft communities, and small to medium-sized enterprises at the local level. Traditionally, registration rights are assigned to the state for GIs that have developed over time based on the reputation and quality of products associated with particular geographical areas. Yet, this also hinders the progress of emerging or potential GI designated projects. Therefore, Article 88(1) of the *Intellectual Property Law* should be amended to: “The authority to register GIs in Vietnam is conferred upon the State and upon organizations or individuals directly involved in the production of products requiring geographical indication registration”. This modification ensures state ownership rights and fosters the registration and development of GIs in localities because the current number of GIs in Vietnam is markedly limited, especially for non-agricultural GIs.

4.2 Conditions for GI registration

Under EU legislation, to qualify for a GI, the law mandates that at least one stage of the product’s production takes place within the designated geographical area (‘Regulation (EU) 2023/2411’, 2023, Article 6(1)(c)). This regulation is appropriate, especially for non-agricultural geographical designations. Glass or crystal manufacturing workshops and stone carving facilities cannot produce raw materials from locally mined quartz sand or raw stone materials, thus requiring their import from other regions. Therefore, the requirement that only “one stage” be produced within the specified geographical indicator is a pragmatic approach and helps avoid unnecessary disputes or technical obstacles that could hinder GI protection.

Vietnam, a nation boasting 3,597 traditional craft villages (Vu, 2015, p.164), steeped over four millennia of history, currently has only two handicraft products safeguarded by geographical indication, which is an indicator of notable constraints. The current Vietnamese legislation does not expressly

outline whether a product must be wholly manufactured in a designated area or only a single step within the GI region is sufficient (Nguyen, 2021, p. 60). Therefore, it is imperative to improving Article 79(1)(c) as follows: "At least one of the production steps of the product occurs in the specified geographical area". This amendment would allow registrants to simplify the description and evidence in the GI application, while promoting legal harmonization with the EU.

5. Concluding remarks

Vietnam's legal framework has comprehensively and suitably addressed matters concerning the safeguarding of geographical indicators, aligning itself with international treaties to which the country is a signatory. Nevertheless, considering the findings and results derived from the research process, the authors argue that the issue of GI protection continues to exhibit certain limitations and deficiencies. Initially, it is important to acknowledge that several deficiencies remain within specific legal frameworks, particularly concerning the criteria for safeguarding GIs, the qualification of entities permitted to apply for such indications, and the complexities surrounding the administration of these indications post-protection. The absence of a legal framework has resulted in inconsistencies in local law enforcement, especially concerning the oversight of protected GIs. Considering the deficiencies discussed, the authors have put forth a series of recommendations aimed at enhancing the safeguarding of GIs in Vietnam. Improving the legal framework, educating individuals in traditional craft villages about the advantages of GIs and proactively negotiating to expand the list of protected non-agricultural GIs under the *EVFTA* to augment product value are essential strategies for ensuring sustainable development, both now and in the future.

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